

Brenton R. Babcock (SBN 162,120)
brent.babcock@knobbe.com
Paul A. Stewart (SBN 153467)
paul.stewart@knobbe.com
Ali S. Razai (SBN 246,922)
ali.razai@knobbe.com
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, Fourteenth Floor
Irvine, CA 92614
Telephone: (949) 760-0404
Facsimile: (949) 760-9502

Attorneys for Plaintiffs
EDGE SYSTEMS LLC and AXIA MEDSCIENCES, LLC

MARK PLAGER (SBN: 192259)
mark@plagerschack.com
MICHAEL SCHACK (SBN: 128784)
michaels@plagerschack.com
MICHAEL O'BRIEN (SBN: 277244)
mobrien@plagerschack.com
PLAGER SCHACK LLP
16152 Beach Blvd., Suite 207
Huntington Beach, CA 92647
Telephone: (714) 698-0601
Facsimile: (714) 698-0608

Attorneys for Defendant AESTHETIC SKIN SYSTEMS LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EDGE SYSTEMS LLC, a California
limited liability company, and AXIA
MEDSCIENCES, LLC, a Delaware
limited liability company,

Plaintiffs,

v.

AESTHETIC SKIN SYSTEMS LLC, a
California limited liability company,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 2:17-cv-04597 PSG (AFMx)

DISCOVERY MATTER

**STIPULATED ~~PROPOSED~~
PROTECTIVE ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

B. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such

1 information is justified in this matter. It is the intent of the parties that
2 information will not be designated as confidential for tactical reasons and that
3 nothing be so designated without a good faith belief that it has been maintained
4 in a confidential, non-public manner, and there is good cause why it should not
5 be part of the public record of this case.

6 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
7 SEAL

8 The parties further acknowledge, as set forth in Section 12.3, below, that
9 this Stipulated Protective Order does not entitle them to file confidential
10 information under seal; Local Civil Rule 79-5 sets forth the procedures that
11 must be followed and the standards that will be applied when a party seeks
12 permission from the court to file material under seal.

13 There is a strong presumption that the public has a right of access to
14 judicial proceedings and records in civil cases. In connection with non-
15 dispositive motions, good cause must be shown to support a filing under seal.
16 *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir.
17 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002),
18 *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999)
19 (even stipulated protective orders require good cause showing), and a specific
20 showing of good cause or compelling reasons with proper evidentiary support
21 and legal justification, must be made with respect to Protected Material that a
22 party seeks to file under seal. The parties' mere designation of Disclosure or
23 Discovery Material as CONFIDENTIAL does not—without the submission of
24 competent evidence by declaration, establishing that the material sought to be
25 filed under seal qualifies as confidential, privileged, or otherwise protectable—
26 constitute good cause.

27 Further, if a party requests sealing related to a dispositive motion or trial,
28 then compelling reasons, not only good cause, for the sealing must be shown,

1 and the relief sought shall be narrowly tailored to serve the specific interest to
2 be protected. *See Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th
3 Cir. 2010). For each item or type of information, document, or thing sought to
4 be filed or introduced under seal in connection with a dispositive motion or trial,
5 the party seeking protection must articulate compelling reasons, supported by
6 specific facts and legal justification, for the requested sealing order. Again,
7 competent evidence supporting the application to file documents under seal
8 must be provided by declaration.

9 Any document that is not confidential, privileged, or otherwise
10 protectable in its entirety will not be filed under seal if the confidential portions
11 can be redacted. If documents can be redacted, then a redacted version for
12 public viewing, omitting only the confidential, privileged, or otherwise
13 protectable portions of the document, shall be filed. Any application that seeks
14 to file documents under seal in their entirety should include an explanation of
15 why redaction is not feasible.

17 2. DEFINITIONS

18 2.1 Action: this pending federal lawsuit.

19 2.2 Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.3 “CONFIDENTIAL” Information or Items: information (regardless
22 of how it is generated, stored or maintained) or tangible things that qualify for
23 protection under Federal Rule of Civil Procedure 26(c). As a general guideline,
24 “CONFIDENTIAL” information is material that a producing party reasonably
25 believes to constitute or include information that is not known or freely
26 accessible to the general public in the categories of 1) confidential and trade
27 secret technical information, 2) financial information, 3) personal information,
28 or 4) information furnished to it in confidence by any third-party. There is a

1 particularized need for information in each of these categories to be covered by
2 the Order in order to protect its confidential nature, either because it is protected
3 by confidentiality agreements or otherwise generally not known by the public.

4 2.4 Counsel: Outside Counsel of Record and House Counsel (as well
5 as their support staff).

6 2.5 Designating Party: a Party or Non-Party that designates
7 information or items that it produces in disclosures or in responses to discovery
8 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY.”

10 2.6 Disclosure or Discovery Material: all items or information,
11 regardless of the medium or manner in which it is generated, stored, or
12 maintained (including, among other things, testimony, transcripts, and tangible
13 things), that are produced or generated in disclosures or responses to discovery
14 in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a
16 matter pertinent to the litigation who has been retained by a Party or its counsel
17 to serve as an expert witness or as a consultant in this Action.

18 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items: extremely sensitive “CONFIDENTIAL” information or
20 items, the disclosure of which to another party or non-party would result in the
21 disclosure of information only known on a “need-to-know basis” and generally
22 not known by individuals not affiliated with a party, including information in
23 the categories of 1) trade secrets, 2) other highly sensitive research, 3)
24 development, 4) production, 5) personnel, 6) commercial, 7) technical, 8)
25 financial, 9) customer identification, or 10) business information (with
26 information in these categories including but not limited to proprietary
27 information, contracts, bids, corporate planning documents, strategic planning
28 documents, documents that reveal market or customer analyses, competitive

1 strategy, research and development documents, financial statements, and other
2 financial or budgetary documents). There is a particularized need for
3 information in each of these categories to be covered by the Order in order to
4 protect its highly sensitive and confidential nature, as disclosure could create a
5 substantial risk of serious harm that could not be avoided by less restrictive
6 means.

7 2.9 House Counsel: attorneys who are employees of a party to this
8 Action. House Counsel does not include Outside Counsel of Record or any
9 other outside counsel.

10 2.10 Non-Party: any natural person, partnership, corporation, association
11 or other legal entity not named as a Party to this action.

12 2.11 Outside Counsel of Record: attorneys who are not employees of a
13 party to this Action but are retained to represent or advise a party to this Action
14 and have appeared in this Action on behalf of that party or are affiliated with a
15 law firm that has appeared on behalf of that party, and includes support staff.

16 2.12 Party: any party to this Action, including all of its officers,
17 directors, employees, consultants, retained experts, and Outside Counsel of
18 Record (and their support staffs).

19 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this Action.

21 2.14 Professional Vendors: persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits
23 or demonstrations, and organizing, storing, or retrieving data in any form or
24 medium) and their employees and subcontractors.

25 2.15 Protected Material: any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY.”
28

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3
4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also (1) any information copied or
7 extracted from Protected Material; (2) all copies, excerpts, summaries, or
8 compilations of Protected Material; and (3) any testimony, conversations, or
9 presentations by Parties or their Counsel that might reveal Protected Material.

10 Any use of Protected Material at trial shall be governed by the orders of
11 the trial judge. This Order does not govern the use of Protected Material at trial.

12
13 4. DURATION

14 Once a case proceeds to trial, information that was designated as
15 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY or maintained pursuant to this protective order used or introduced as an
17 exhibit at trial becomes public and will be presumptively available to all
18 members of the public, including the press, unless compelling reasons supported
19 by specific factual findings to proceed otherwise are made to the trial judge in
20 advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good
21 cause” showing for sealing documents produced in discovery from “compelling
22 reasons” standard when merits-related documents are part of court record).
23 Accordingly, the terms of this protective order do not extend beyond the
24 commencement of the trial.

25
26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for
28 Protection. Each Party or Non-Party that designates information or items for

1 protection under this Order must take care to limit any such designation to
2 specific material that qualifies under the appropriate standards. The Designating
3 Party must designate for protection only those parts of material, documents,
4 items or oral or written communications that qualify so that other portions of the
5 material, documents, items or communications for which protection is not
6 warranted are not swept unjustifiably within the ambit of this Order.

7 Mass, indiscriminate or routinized designations are prohibited.
8 Designations that are shown to be clearly unjustified or that have been made for
9 an improper purpose (e.g., to unnecessarily encumber the case development
10 process or to impose unnecessary expenses and burdens on other parties) may
11 expose the Designating Party to sanctions.

12 If it comes to a Designating Party's attention that information or items
13 that it designated for protection do not qualify for protection, that Designating
14 Party must promptly notify all other Parties that it is withdrawing the
15 inapplicable designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided
17 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
18 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
19 for protection under this Order must be clearly so designated before the material
20 is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
23 documents, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), that the Producing Party affix at a minimum, the legend
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
26 ONLY" (hereinafter "CONFIDENTIALITY legend"), to each page that
27 contains protected material.
28

1 A Party or Non-Party that makes original documents available for
2 inspection need not designate them for protection until after the inspecting Party
3 has indicated which documents it would like copied and produced. During the
4 inspection and before the designation, all of the material made available for
5 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY.” After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party must determine which documents, or
8 portions thereof, qualify for protection under this Order. Then, before producing
9 the specified documents, the Producing Party must affix the
10 “CONFIDENTIALITY legend” to each page that contains Protected Material.

11 (b) for testimony given in depositions that the Designating Party
12 identifies the Disclosure or Discovery Material on the record, the Designating
13 Party shall specify all protected testimony and the level of protection being
14 asserted. It may make that designation during the deposition or proceeding, or
15 may invoke, on the record or by written notice to all parties on or before the
16 next business day, a right to have up to 21 days from the date the transcript of
17 the deposition or proceeding is made available to make its designation, pursuant
18 to which all testimony will be treated as “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” until the Designating Party specifies its
20 designation or the 21-day period expires, whichever is earlier.

21 (c) for information produced in some form other than documentary and
22 for any other tangible items, that the Producing Party affix in a prominent place
23 on the exterior of the container or containers in which the information is stored
24 the proper CONFIDENTIALITY legend. If only a portion or portions of the
25 information warrants protection, the Producing Party, to the extent practicable,
26 shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. An inadvertent failure to
28 designate qualified information or items does not, standing alone, waive the

1 Designating Party's right to secure protection under this Order for such material.
2 Upon correction of a designation, the Receiving Party must make reasonable
3 efforts to assure that the material is treated in accordance with the provisions of
4 this Order.

5
6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time that is consistent with the Court's
9 Scheduling Order.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
11 resolution process under Local Rule 37-1 et seq.

12 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via
13 a joint stipulation pursuant to Local Rule 37-2.

14 6.4 The burden of persuasion in any such challenge proceeding shall be
15 on the Designating Party. Frivolous challenges, and those made for an improper
16 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
17 parties) may expose the Challenging Party to sanctions. Unless the Designating
18 Party has waived or withdrawn the confidentiality designation, all parties shall
19 continue to afford the material in question the level of protection to which it is
20 entitled under the Producing Party's designation until the Court rules on the
21 challenge.

22
23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material
25 that is disclosed or produced by another Party or by a Non-Party in connection
26 with this Action only for prosecuting, defending or attempting to settle this
27 Action. Such Protected Material may be disclosed only to the categories of
28 persons and under the conditions described in this Order. When the Action has

1 been terminated, a Receiving Party must comply with the provisions of section
2 13 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at
4 a location and in a secure manner that ensures that access is limited to the
5 persons authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party,
8 a Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for this Action;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who
22 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) the author or recipient of a document containing the information or
24 a custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in
26 the Action to whom disclosure is reasonably necessary provided: (1) the
27 deposing party requests that the witness sign the form attached as Exhibit A
28 hereto; and (2) they will not be permitted to keep any confidential information

1 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
2 A), unless otherwise agreed by the Designating Party or ordered by the court.
3 Pages of transcribed deposition testimony or exhibits to depositions that reveal
4 Protected Material may be separately bound by the court reporter and may not
5 be disclosed to anyone except as permitted under this Stipulated Protective
6 Order;and,

7 (i) any mediator or settlement officer, and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions.

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’
10 EYES ONLY” Information or Items. Unless otherwise ordered by the court or
11 permitted in writing by the Designating Party, a Receiving Party may disclose
12 any information or item designated “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
15 well as employees of said Outside Counsel of Record to whom it is reasonably
16 necessary to disclose the information for this Action;

17 (b) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (c) the court and its personnel;

21 (d) court reporters and their staff;

22 (e) professional jury or trial consultants, mock jurors, and Professional
23 Vendors to whom disclosure is reasonably necessary for this Action and who
24 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (f) the author or recipient of a document containing the information or
26 a custodian or other person who otherwise possessed or knew the information;
27 and,
28

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.4 Procedures for Approving or Objecting to Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY Material to Experts

(a) A party seeking to disclose to an expert retained by outside counsel of record any information or item that has been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first (1) set forth the full name of the expert and the city and state of his or her primary residence, (2) attach a copy of the expert's current resume, (3) identify the expert's current employer(s), (4) identify each person or entity from whom the expert has received compensation or funding for work in his or her areas of expertise (including in connection with litigation) in the past five years, and (5) identify (by name and number of the case, filing date, and location of court) any litigation where the expert has offered expert testimony, including by declaration, report, or testimony at deposition or trial, in the past five years. If the expert believes any of this information at (3) - (5) is subject to a confidentiality obligation to a third party, then the expert should provide whatever information the expert believes can be disclosed without violating any confidentiality agreements, and the party seeking to disclose the information to the expert shall be available to meet and confer with the designator regarding any such confidentiality obligations.

(b) A party that makes a request and provides the information specified in paragraph 7.4(a) may disclose the designated material to the identified expert unless, within seven days of delivering the request, the party receives a written objection from the designator providing detailed grounds for the objection.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice-to-voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no

1 agreement is reached, the Party seeking to make the disclosure to the Expert
2 may file a motion as provided under L.R. 37-1 through L.R. 37-4, seeking
3 permission from the Court to do so.

4 (d) In any such proceeding, the Party opposing disclosure to the Expert
5 shall bear the burden of proving that the risk of harm that the disclosure would
6 entail (under the safeguards proposed) outweighs the Receiving Party's need to
7 disclose the Protected Material to its Expert.

8 (e) Dr. Bruce Freedman and Mr. Nathaniel Coleman, previously
9 identified as experts by Defendant, have been pre-approved by Plaintiffs and
10 thus may review HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
11 information immediately, without the need for further approval under this
12 Section 7.4.

13
14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
15 PRODUCED IN OTHER LITIGATION

16 If a Party is served with a subpoena or a court order issued in other
17 litigation that compels disclosure of any Protected Material, that Party must:

18 (a) promptly notify in writing the Designating Party. Such notification
19 shall include a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or
21 order to issue in the other litigation that some or all of the material covered by
22 the subpoena or order is subject to this Protective Order. Such notification shall
23 include a copy of this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be
25 pursued by the Designating Party whose Protected Material may be affected.

26 If the Party fails to seek a protective order from this court within 14 days
27 of receiving the notice and accompanying information, the Receiving Party may
28 produce the Designating Party's confidential information responsive to the

1 subpoena or court order. If the Designating Party timely seeks a protective
2 order, the Party served with the subpoena or court order shall not produce any
3 information designated in this action as “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by
5 the court from which the subpoena or order issued, unless the Party has obtained
6 the Designating Party’s permission. The Designating Party shall bear the burden
7 and expense of seeking protection in that court of its confidential material and
8 nothing in these provisions should be construed as authorizing or encouraging a
9 Receiving Party in this Action to disobey a lawful directive from another court.

10
11 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a
14 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information
16 produced by Non-Parties in connection with this litigation is protected by the
17 remedies and relief provided by this Order. Nothing in these provisions should
18 be construed as prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party’s confidential information in its possession, and the Party
21 is subject to an agreement with the Non-Party not to produce the Non-Party’s
22 confidential information, then the Party shall:

23 (1) promptly notify in writing the Requesting Party and the Non-Party
24 that some or all of the information requested is subject to a confidentiality
25 agreement with a Non-Party;

26 (2) promptly provide the Non-Party with a copy of the Stipulated
27 Protective Order in this Action, the relevant discovery request(s), and a
28 reasonably specific description of the information requested; and

1 (3) make the information requested available for inspection by the
2 Non-Party, if requested.

3 (c) If the Non-Party fails to seek a protective order from this court
4 within 14 days of receiving the notice and accompanying information, the
5 Receiving Party may produce the Non-Party's confidential information
6 responsive to the discovery request. If the Non-Party timely seeks a protective
7 order, the Receiving Party shall not produce any information in its possession or
8 control that is subject to the confidentiality agreement with the Non-Party before
9 a determination by the court. Absent a court order to the contrary, the Non-
10 Party shall bear the burden and expense of seeking protection in this court of its
11 Protected Material.

12
13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has
15 disclosed Protected Material to any person or in any circumstance not
16 authorized under this Stipulated Protective Order, the Receiving Party must
17 immediately (a) notify in writing the Designating Party of the unauthorized
18 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
19 Protected Material, (c) inform the person or persons to whom unauthorized
20 disclosures were made of all the terms of this Order, and (d) request such person
21 or persons to execute the "Acknowledgment and Agreement to Be Bound" that
22 is attached hereto as Exhibit A.

23
24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 The Parties acknowledge that regardless of the diligence of any party, an
27 inadvertent production of privileged or attorney work product documents may
28 occur. If a producing party, through inadvertence, produces or provides

1 discovery that it reasonably believes is privileged or otherwise immune from
2 discovery, the producing party may claw back the protected document by
3 making a written request to the receiving party specifically identifying the
4 protected document, including the date, author, addressees, and topic of the
5 document, as well as a brief explanation substantiating the claim of privilege. If
6 these conditions are met, the receiving party shall destroy or return to the
7 producing party such inadvertently produced materials and all copies thereof
8 within five (5) calendar days of receipt of the written request. The inadvertent
9 production of privileged documents does not constitute a waiver of the privilege
10 and the receiving party may not bring a motion to compel based on a waiver
11 caused by the inadvertent production. Return of the materials shall not
12 constitute an admission or concession, or permit any inference, that the returned
13 materials are, in fact, properly subject to a claim of privilege or immunity from
14 discovery.

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for
20 production without prior privilege review.

21 22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of
24 any person to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order, no Party waives any right it otherwise would have to object to
27 disclosing or producing any information or item on any ground not addressed in
28 this Stipulated Protective Order. Similarly, no Party waives any right to object

1 on any ground to use in evidence of any of the material covered by this
2 Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Local Civil Rule 79-5. Protected Material
5 may only be filed under seal pursuant to a court order authorizing the sealing of
6 the specific Protected Material at issue. If a Party's request to file Protected
7 Material under seal is denied by the court, then the Receiving Party may file the
8 information in the public record unless otherwise instructed by the court.

9
10 13. FINAL DISPOSITION

11 After the final disposition of this Action, as defined in paragraph 4, within
12 60 days of a written request by the Designating Party, each Receiving Party
13 must return all Protected Material to the Producing Party or destroy such
14 material. As used in this subdivision, "all Protected Material" includes all
15 copies, abstracts, compilations, summaries, and any other format reproducing or
16 capturing any of the Protected Material. Whether the Protected Material is
17 returned or destroyed, the Receiving Party must submit a written certification to
18 the Producing Party (and, if not the same person or entity, to the Designating
19 Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
20 all the Protected Material that was returned or destroyed and (2) affirms that the
21 Receiving Party has not retained any copies, abstracts, compilations, summaries
22 or any other format reproducing or capturing any of the Protected Material.
23 Notwithstanding this provision, Counsel are entitled to retain an archival copy
24 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
25 memoranda, correspondence, deposition and trial exhibits, expert reports,
26 attorney work product, and consultant and expert work product, even if such
27 materials contain Protected Material. Any such archival copies that contain or
28

1 constitute Protected Material remain subject to this Protective Order as set forth
2 in Section 4 (DURATION).

3
4 14. VIOLATION

5 Any violation of this Order may be punished by appropriate measures including,
6 without limitation, contempt proceedings and/or monetary sanctions.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 KNOBBE, MARTENS, OLSON & BEAR, LLP
9

10 Dated: July 10, 2018

By: /s/ Paul A. Stewart

11 Brenton R. Babcock
12 Paul A. Stewart
13 Ali S. Razai

14 Attorneys for Plaintiffs
EDGE SYSTEMS LLC and
AXIA MEDSCIENCES, LLC

15 PLAGER SCHACK LLP

16
17 Dated: July 10, 2018

By: /s/ Mark Plager (with permission)

18 Mark Plager
19 Michael Schack
20 Michael O'Brien

21 Attorney for Defendant
AESTHETIC SKIN SYSTEMS LLC

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23 DATED: 7/10/2018

24 
25

26 ALEXANDER F. MacKINNON
27 United States Magistrate Judge
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District
of California on [date] in the case of *Edge Systems LLC and Axia Medsciences,
LLC v. Aesthetic Skin Systems LLC*, C.A. 2:17-cv-04597 PSG (AFMx). I agree
to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose
me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name]
of _____ [print or type full address
and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

28619783